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No. 86-195

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC.,
KONKAR SHIPPING AGENCIES, S.A.,
AND KONKAR RESOLUTE CORPORATION,
Petitioners,

VS.

AMALIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TRUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NICKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; AND VASILIKI LAMBOU,
Respondents.

MOTION TO FILE AMICUS CURIAE BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

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Respondents.

MOTION TO FILE AMICUS CURIAE BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

Applicant, The Maritime Law Association of the United States (MLA), moves the Court for permission to file an amicus curiae brief in support of the petition for writ of certiorari filed by Arkon Shipping Agency, Inc., Konkar Shipping Agencies, S.A., and Konkar Resolute Corporation. Petitioners have given consent, but consent, re-

quested by letter, ~~has not been received from Respondents and leave to file must be sought~~ refused.

Applicant has a very strong interest in the disposition of this case. The Maritime Law Association of the United States (MLA) is a nationwide bar association founded in 1899. It has a membership of more than 3564 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association, and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests — shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

MLA's purposes are stated in the Articles of Association:

> The objects of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, and to act with foreign and other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

In furtherance of these objectives MLA, during the 87 years of its existence, has sponsored such federal maritime legislation as the Salvage Act (1912)[1], the Carriage of Goods by Sea Act (1936)[2], the Admiralty Extension

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[1] 46 U.S.C. §§ 727-31.

[2] 46 U.S.C. §§ 1300-15.

Act (1948)[3], and has cooperated with Congressional committees in the formulation of other maritime legislation including the Water Quality Improvement Act of 1970[4], the 1972 Water Pollution Control Act Amendments[5], the statutory implementation of the 1972 Convention for Preventing Collisions at Sea[6], the Federal Court Jurisdiction Bill[7], and the United States Inland Navigation Rules.[8]

MLA is participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its Commission on Trade Law ("UNCITRAL") and Trade and Development ("UNCTAD"). It works closely with the International Maritime Organization (IMO).

From time to time MLA recommended improvements in the former General Admiralty Rules of the United States Supreme Court, and in the 1960's assisted the Court's Advisory Committee on Admiralty Rules in unification of the General Admiralty Rules and the Federal Rules of Civil Procedure. John McHose, Counsel of Record, was a member of that Advisory Committee.

MLA has actively participated, as one of some 45 national maritime law associations constituting the

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[3]46 U.S.C. § 740.

[4]33 U.S.C. §§ 1161-75.

[5]33 U.S.C. §§ 1251-1376.

[6]Text published by the Inter-Governmental Maritime Consultative Organization.

[7]S. 1876, 93rd Cong., 1st Sess.

[8]33 U.S.C. §§ 2001-73.

Comite Maritime International[9], in the movement to achieve maximum international uniformity in maritime law through the medium of international conventions, such as those relating to Assistance and Salvage (1910)[10], Ocean Bills of Lading (1924)[11], Collision (1910)[12], Limitation of Liability of Owners of Sea-Going Vessels (1957)[13], Maritime Liens and Mortgages (1968)[14], Civil Liability of Oil Pollution Damages (1969)[15] and Limitation of Liability for Maritime Claims[16].

MLA believes uniformity in maritime law, both national and international, is of great importance. Concern over a tendency of state and local legislation and regulations to encroach upon the maritime field prompted adoption, in 1975, of the following Resolution.

> RESOLVED, that the Maritime Law Association of the United States considers it of the utmost

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[9]These now include the national association of Argentine, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Columbia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany (West Germany), Greece, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Mexico, Morocco, The Netherlands, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

[10]37 Stat. 1658 (1913).

[11]51 Stat. 233 (1937).

[12]Knauth's Benedict on Admiralty 37 (7th ed., rev.) (hereinafter "Benedict").

[13]6A Benedict 634.

[14]Singh, International conventions of Merchant Shipping (2d Edition 1973).

[15]6A Benedict 951.

[16]1977 AMC 1607.

> importance and in the public interest that maritime law be uniform to the maximum extent possible throughout the United States; it is greatly concerned about, and strongly opposes the current poliferation of disparate state and local legislation adversely affecting such uniformity and advocates that Congress consider the matter and enact legislation designed to protect and maintain national uniformity in maritime law.

A substantially identical resolution was adopted by the American Bar Association at Atlanta in 1976.

MLA has, in furtherance of the uniformity policy and this resolution, filed amicus briefs in a number of cases, including three accepted by the United States Supreme Court.[17]

It is also the policy of MLA to file briefs as amicus curiae only when an important issue of maritime law is involved and the court's decision may substantially affect the uniformity of maritime law.

As stated, maintenance of uniformity in the administration and practice of maritime law throughout the United States is extremely important. No state law should be permitted to conflict with or be inconsistent with established federal maritime law.

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[17] *Askew v. American Waterways Operators,* 411 U.S. 325 (1973); *Ray v. Atlantic Richfield Co.,* 435 U.S. 151 (1978); *Air Logistics, Inc. v. Tallentire,* No. 85-202, 106 S. Ct. 2485 (1986).

This exact situation has been created in Louisiana by the Court of Appeal reversal of the conditional dismissal by the Judicial District Court which the Louisiana Supreme Court refused to review by a 4 to 3 vote. If not corrected it will result in a flood of quasi in rem attachments of ships in Louisiana in the effort to obtain more favorable jurisdiction which would be dismissed by federal courts and state courts which apply federal maritime law.

DATED: September 5, 1986.

Respectfully submitted,

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Respondents.

BRIEF IN SUPPORT OF THE ISSUANCE OF A WRIT OF CERTIORARI

The Maritime Law Association of the United States (MLA) respectfully submits this Brief as amicus curiae in support of the petition for Certiorari of Arkon Shipping Agency, Inc., Konkar Shipping Agencies, S.A., and Konkar Resolute Corporation.

QUESTION OF LAW PRESENTED

When state law provides for attachment of a ship quasi in rem to assert a maritime cause of action, but does not specifically provide for dismissal of a maritime case on the ground of forum non conveniens, conditioned upon acquiescence to suit in a convenient forum, may such state law govern a maritime case in which both a trial court in that state and a federal court in another state, applying established maritime law, have ordered such conditional dismissal?

INTEREST OF AMICUS CURIAE

This is stated in the Motion which precedes this Brief.

ARGUMENT

1. This Case Severely Threatens The Uniformity Of Maritime Law in The United States. It Presents An Important Question Of Federal Maritime Law Which Should Be Settled For Reasons Stated In The Pending Petition And Brief.

MLA believes Petitioner's Brief adequately states reasons why the Louisiana Fifth Circuit Court of appeal decision must be reversed. We see no need to reiterate or amplify those reasons but wish to emphasize why, to maintain uniformity, the error in allowing Louisiana law to govern this maritime case must be corrected.

The Constitution of the United States was clearly designed, in substantial part, to promote, and indeed require, national uniformity with respect to certain matters. One of these was most certainly maritime commerce, particularly occurrences beyond State territorial waters. The Supremacy Clause (Article VI, Section 8, Clause 2), the Commerce Clause (Article I, Section 8, Clause 3), the Admiralty Clause (Article III, Section 2, Clause 3), and the "Necessary and Proper Laws Clause" (Article I, Section 8, Clause 18) bear witness to this.

The Admiralty Clause, and decisions of this Court interpreting it, and the Necessary and Proper Laws Clause, confirm that, except in areas of purely local concern, the general maritime law is to prevail throughout the country.

Admiralty has developed a great body of well established law. It is essential that such law be uniform. Shipowners, and maritime operators worldwide, are enti-

tled to know that uniform law will apply in all maritime cases filed in the United States.

The Federal Government has exclusive jurisdiction and control over interstate and foreign transportation by sea. No state may impose, prohibit, or restrict, in a manner which places a burden on such transportation. Nor can state law interfere with the uniformity of maritime law as enforced by courts throughout the United States. Uniformity would be destroyed if state law, which happens to vary from federal law, is permitted to govern maritime causes of action.

As pointed out in Petitioner's brief, from *Southern Pacific v. Jensen* through *Air Logistics v. Tallentire,* the Supreme Court has consistently recognized federal supremacy and exclusivity and the need for uniformity in the field of maritime law.

If the Court of Appeal decision is allowed to stand, Louisiana will follow maritime law in that a ship can be attached by quasi in rem procedure, thus forcing the owner to appear. This procedure was conceived in, and has long been, an important part of maritime law.

Maritime law permits such attachment to be dismissed on the ground of forum non conveniens. It also permits conditioning such dismissal, for the benefit of plaintiffs, upon acquiescence by the shipowner to appear and defend the claim in a convenient forum. Such dismissal will not be permitted in Louisiana by this ruling.

Under federal maritime law the only question for consideration by the Court of Appeal would have been whether the trial court abused its discretion.

There was certainly no abuse of discretion. The trial court exercised discretion in exactly the manner approved in the *Lauritzen/Rhoditis/Gilbert* line of cases, cited by Petitioners.

We respectfully suggest that the Louisiana Court of Appeal erred in treating the conditional dismissal as merely procedural. This overlooked the fact that it required consideration of factors which have been declared pertinent in deciding whether lack of local private, or public, concern makes it proper to decline jurisdiction. The trial court considered these factors and decided justice would best be served in a court in Greece.

Canada Malting Co. v. Paterson Steamships, 285 U.S. 413, involved a collision in United States territorial waters. The trial court dismissed on the ground of forum non conveniens on the basis that Canadian jurisdiction was more appropriate. This court held the trial court had unqualified discretion to decline jurisdiction in suits in admiralty. It was also noted that "forum shopping" is undesirable.

2. This Court Has Power to Supervise Maritime Litigation in the United States.

It is settled law that under the Supremacy Clause of the Constitution a State court can be required to adjudicate Federal claims even if the same court might not have jurisdiction to hear similar claims arising solely under State law. *See Testa v. Katt,* 330 U.S. 386 (1947); *Mondou v. New York, N.H. & H.R.R.,* 223 U.S. 1 (1912).

This matter arises under the permissive grant of jurisdiction to State courts to hear maritime cases within the "saving-to-suitors" clause. *28 U.S.C. § 1333(1).* The important question is whether, in a maritime case, where failure to dismiss by a Federal court would be an abuse of discretion, the Supreme Court may prohibit a State court from retaining jurisdiction.

The decision may seem to be only a parochial ruling by an intermediate State appellate court. But New Orleans is one of the nation's major seaports and accounts for a

significant percentage of maritime litigation, especially personal injury litigation. If an alien plaintiff, simply by seizing a ship, owned by non United States citizens, under State quasi in rem process, rather than Federal maritime process, can avoid dismissal of a State court maritime action which would unquestionably be dismissed in a Federal court, forum shopping in the courts of Louisiana will undoubtedly follow.

In *Piper Aircraft Co. v. Reyno,* 454 U.S. 252, the court held that if a court could not dismiss a case on the ground of forum non conveniens "the American courts which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts."

CONCLUSION

We most respectfully urge this Honorable Court to grant the Petition for Certiorari.

DATED: September 5, 1986.

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On September 5, 1986, I served the within Motion To File Amicus Curiae Brief and Brief In Support Of A Petition For A Writ Of Certiorari in re: "Arkon Shipping Agency, Inc. vs. Amalia Kassapas" in the United States Supreme Court, October Term 1986, No. .....;

on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on September 5, 1986, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA